IN THE

# Supreme Court of the United States

October Term, 1945

No. 37.

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, President Thereof, et al.,

*Petitioners,*

vs.

SHELTON PITNEY and WALTER P. GARDNER, Trustees of CENTRAL RAILROAD CO. of NEW JERSEY, et al.

*Respondents.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

## PETITION FOR REHEARING

V. C. SHUTTLEWORTH,
Merchants National Bank Building,
Cedar Rapids, Iowa.

CARL S. KUEBLER,
75 Montgomery Street,
Jersey City 2, New Jersey.

RUFUS G. POOLE,
MILTON C. DENBO,
Second National Bank Building,
Washington, D. C.

*Attorneys for the Petitioners.*

THE TORCH PRESS, CEDAR RAPIDS, IOWA

## SUBJECT INDEX



## TABLE OF CASES CITED

## OTHER REFERENCES

IN THE

# Supreme Court of the United States

October Term, 1945

---

No. 37.

---

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, President Thereof, et al.,

*Petitioners,*

vs.

SHELTON PITNEY and WALTER P. GARDNER, Trustees of CENTRAL RAILROAD CO. of NEW JERSEY, et al.

*Respondents.*

---

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

---

## PETITION FOR REHEARING

The above named petitioners present this petition for rehearing and, in support thereof, respectfully show:

## I

### The majority opinion has inadvertently failed to give consideration to the statutory limitations on the jurisdiction of the Adjustment Board.

The majority opinion holds that petitioners have not made out a case of irreparable loss or inadequacy of the legal remedy, and that before a court of equity will exercise its discretion to issue any restraint the controversy must be submitted to and decided by the First Division of the National Railroad Adjustment Board.

In announcing and reaching these conclusions the court, we respectfully submit, has accorded the Adjustment Board a more extensive jurisdiction than that granted to it by Congress. Congress limited the jurisdiction of the Adjustment Board to disputes between employees and the carriers, and did not grant juridiction to the Board to hear and decide "jurisdictional disputes" between *two* distinct crafts and classes of *employees*.

The general jurisdiction of the Railroad Adjustment Board is defined in Section 3 (i) as follows:

> "(i) The disputes *between an employee or group of employees* and *a carrier or carriers* growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled *in the usual manner* up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes *may* be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

In establishing the Board, Congress created a *bi-partisan* body equally divided between representatives of manage-

ment and representatives of labor. The First Division of the Board consists of five carrier representatives and five labor representatives. Of the five labor representatives, one is designated by the ORC and one is designated by the BRT.[1] Throughout the long history of the railway labor legislation, such boards have functioned *exclusively* to hear and determine disputes existing between labor on the one hand and management on the other.

Obviously, Congress did not intend to establish a bi-partisan board and endow it with jurisdiction to determine "jurisdictional disputes" fundamentally involving two different crafts and only incidentally involving management. Otherwise the balance of representation is broken and the advantages of a bi-partisan board are destroyed. If "jurisdictional disputes" between two or more crafts were to be submitted to such a board, the labor representatives on the board would be split by their respective individual interests in the controversy and the carrier representatives would be inclined to remain united. The result would be that a group of employees, or their statutory representative, aggrieved by carrier action in these circumstances would be forced to submit the controversy to a division of the Adjustment Board one of whose labor members is hostile to its position, with the decision resting in the hands of the carrier members entirely. The advantages of balanced representation with submission of deadlocked cases to a neutral referee would be destroyed and an instrument of oppression would be placed in carrier hands.

There is no indication in the historical or legislative history[2] of the Railway Labor Act, or the terminology or statutory scheme of the Act, that Congress intended this bi-partisan board to decide "jurisdictional disputes"

---

[1] The 11th annual report of the First Division of the National Railroad Adjustment Board for the Fiscal year ending June 30, 1945.

[2] The record on the reargument in the *Elgin, Joliet and Eastern Railway Company vs. Burley*, 89 Law ed., p. 1328, discloses the historical and legislative background of this section to which reference is hereby made.

between two rival statutory representatives. The Act confers jurisdiction to decide disputes "*between* an employee or group of employees *and* a carrier or carriers." Disputes submitted to the Board are to be handled "in the *usual* manner up to and including the chief operating officer of the carrier." These are the "*minor* disputes." If unadjusted, "*either* party" may refer the disputes to the Adjustment Board. The Act anticipates that deadlocks will likely result between carrier and labor members. Awards shall be binding "upon *both* parties to the dispute." Upon an award "in favor of *the petitioner*, the division of the board shall make an order, directed *to the carrier*."

Throughout Section 3, the Act refers to *two* adversary parties — the employees on the one hand and the carrier on the other. No provision is made for submission or decision of a tripartite dispute between two adversary crafts of employees and a carrier adversary to one craft or, perhaps *neutral as between them*.

Although no jurisdiction is granted to the Adjustment Board to decide "jurisdictional disputes," the majority opinion states:

> "For ORC's agreement with the railroad must be read in *the light of others between the railroad and BRT*. And since *all* parties seek to support their particular interpretation of these agreements by evidence as to usage, practice and custom that too must be taken into account and properly understood * * * But the court should not have interpreted the contracts for purposes of finally adjudicating *the disputes between the unions* and the railroad. The dismissal of the complaint should therefore be stayed by the District court, so as to give an opportunity for application to the Adjustment Board *for an interpretation of the agreements. Any* rights clearly revealed by such an interpretation might then, if the situation warrants, be protected in this proceeding."[3] (Emphasis supplied)

---

[3] See also footnote 2 of the dissenting opinion of Mr. Justice Rutledge.

The court imputes a far broader jurisdiction to the Adjustment Board than was granted to it in the Act.

The legislative history of the 1934 amendments clearly discloses that the jurisdiction of the Board, as in the past, was to be confined to disputes between employees and the carrier, and further, that it was not to be extended to include determination of disputes concerning *changes* in rates of pay, rules or working conditions. The Honorable Joseph C. Eastman, in testifying in the hearings[1] on the 1934 amendments before the Committee on Interstate Commerce, stated:

> "Another difficulty with the present law, even where an Adjustment Board has been established, is that, although its decisions are final and binding upon *both* parties, there can be no certainty that there will be a decision. The *two* sides are now *evenly represented* on these boards, and hence deadlocks are a very distinct possibility * * * because of lack of adjustment boards in many situations and the tendency of those which do exist to deadlock, very disturbing conditions have at times been created, especially in recent months * * * The bill before you, S 3266, attempts to remedy both of these deficiencies in the present law. It provides for the creation of a national adjustment board to which unadjusted 'disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions' may be enforced. *Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted through the process of mediation.*" (Emphasis supplied)

Also, in *Brotherhood of Railroad Trainmen vs. National Mediation Board*, (App. D. C.) 135 F. 2d 780, 784, Mr. Jus-

---

[1] Hearings before the Committee on Interstate Commerce, United States Senate, Seventy-Third Congress, Second Session, on S. 3266, p. 28.

tice Rutledge, then Judge Rutledge, in the concurring opinion stated:

> "In summary, the (National Mediation) Board has no power under Section 2, Ninth, to decide a jurisdictional dispute as such."

It is respectfully submitted that the Adjustment Board has no power to decide a jurisdictional dispute as such.

Changes in wages, rules or working conditions ordinarily involve more than one group of employees and frequently engender controversial issues between them. Congress did not intend such disputes to be determined by the Adjustment Board. The Adjustment Board, as the majority opinion recognizes, can only order reinstatement and grant a money award. Designed as a bi-partisan body to handle the so-called "minor disputes" it was not intended that it should decide jurisdictional controversies between two crafts or two rival statutory representatives.

## II

## The Court has inadvertently failed to consider important factors bearing on the exercise of equity Jurisdiction.

Irrespective of the jurisdiction Congress intended to confer on the Adjustment Board, we respectfully submit that the court has inadvertently failed to give consideration to factors of public importance which warrant and should compel a court of equity to grant immediate relief.

### A. TIME INVOLVED IN ADJUSTMENT BOARD DECISIONS.

It is a matter of record that the First Division of the Railroad Adjustment Board is years behind in its docket.

Based on past experience it is reasonable to believe that some three to five years would elapse before any decision could be rendered in this case were it submitted to the Adjustment Board.[5]

The delay in the determination of cases submitted to the Adjustment Board was so great that in March of 1945 the late President Roosevelt requested E. J. Connors, former Director Division of Transport Personnel, Director Railway Operations Office Defense Transportation to investigate and make a report. Whether the report of Mr. E. J. Connors has been made your petitioners are not advised but at all events it has not been publicly released.

The record before the court on the rehearing in case No. 160, *Elgin, Joliet and Eastern Railway Company vs. G. W. Burley, at al*, 89 Law ed., p. 1328, also discloses that since the decision in said cause the First Division of the Adjustment Board has substantially ceased to function.

To require, as a condition to the exercise of equitable discretion in issuing a restraint against a carrier for changing the rates of pay, rules, or working conditions of any class or craft of railroad employees without having given the notice required by Section 6 of the Railway Labor Act, that the matter be first submitted to an Adjustment Board, where it is impractical and impossible to obtain a decision for a period of years, is to effectively destroy the mandatory provision of Section 6 of the Act. The Adjustment Board has no power to stay the action of the carrier pending determination of the controversy. As a result a carrier, *merely by* the claim of only having made a new *interpretation* of a contract, is enabled to change working conditions at will and force the employees' representative to stand

[5] The inquiry of the Attorney General's Committee on Administrative Procedure relating to the National Railroad Adjustment Board, p. 108, disclosed that in December, 1939, there were 3,639 cases awaiting decision and stated, "Not only is Division 1 behind in its docket, but it is constantly falling further behind." The forecast as thus indicated is born out by the Eleventh Annual Report of the First Division of the National Railroad Adjustment Board, for the Fiscal Year Ended June 30, 1945.

helpless for years awaiting the decision of the Adjustment Board. In the intervening years the carrier has thereby been enabled to violate the obligations of Section 6 with an impunity apparent to its employees.

The human emotions involved in a dispute of this character are such that men will not wait for a period of years and the only effective and practical remedy to a group of employees subjected to carrier action, as in the case at bar, is to strike. The right to work and the preference among members of the craft, based on their age in the service, for the jobs available, is one of the most cherished rights of railroad employees. The summary action of the carrier, in eliminating jobs contrary to long established practice and interpretation and contrary to the written interpretation and agreement of 1940 with O. R. C., strikes at the very heart of labor's most cherished possession. It is a type of dispute which demands immediate efforts toward settlement, if industrial strife is to be avoided. Such disputes are, as noted by this court in *Switchmen's Union of North America vs. National Mediation Board*, 300 U. S. 297, "highly controversial" and "explosive" in character. The benefits of Section 6 are lost if a carrier can compel submission of such issues to a bi-partisan board now years behind in its docket.

B. EFFECT OF ADJUSTMENT BOARD DECISION.

At p. 5 the majority opinion states:

> "The dismissal of the cause should therefore be stayed by the District Court, so as to give an opportunity for application to the Adjustment Board for an interpretation of the agreements. Any rights clearly revealed by such an interpretation might then, *if the situation warrants, be protected in this proceeding.*" (Emphasis supplied)

Apparently this court has ordered the District Court to retain jurisdiction for the purpose of proceeding under

Section 3(p) of the Act in the event that the Adjustment Board renders an award favorable to O. R. C. Obviously any decision of the Board will be little more than advisory in nature. In the event the O. R. C. would seek to enforce a favorable award, the District Court will still be compelled to review the award and determine whether the interpretation placed on the collective bargaining contracts by the Adjustment Board is correct or incorrect. The Adjustment Board can not relieve the District Court of the duty of interpretation of the agreements in issue. Nor can the District Court avoid its duty to review the award and determine for itself the proper interpretation of the contract by refusing to act in the first instance. And if the District Court reaches a conclusion inconsistent with the Adjustment Board determination, it will have the duty and the power to set aside the award. Under the decision of this court, the duty and right of the District Court to interpret the collective contract before it, in the event of a decision favorable to the O. R. C., has merely been postponed for a period of years. On the other hand, in the event the Adjustment Board should render an adverse decision, the O. R. C. is denied the right of judicial review of the issue presented.

## C. UNFAIR LABOR PRACTICES.

Certainly this court will not fail to appreciate the effect upon the reputation and standing of the O. R. C. as the representative of the class and craft of road conductors by what has transpired in the case at bar. In *May Department Stores Company vs. National Labor Relations Board*, 90 Law ed. 131, it was held that an increase in compensation to its employees by an employer, without negotiations with the union, was an unfair labor practice under the National Labor Relations Act.

The majority opinion characterizes this controversy as a "jurisdictional dispute" and if it is such, *it has become and been made one by the deliberate act of the carrier*, who, with-

out the notice required by Section 6, changed the working conditions of the craft of road conductors, as embodied in agreements under an undisputed interpretation for many years, which was reduced to writing, as clearly as words could define it, between the carrier and O. R. C. in 1940. A similar "jurisdictional dispute" might be *created* by a carrier as between the firemen and the engineers, or as between Pullman car conductors and road conductors, or between other crafts.

If a carrier may do what has been done in the case at bar and leave the aggrieved union and the individual employees with no remedy except as they first submit the case to the bi-partisan Adjustment Board, *a powerful weapon of influence* has indeed been placed in the hands of the carrier. The decision points the way to any carrier, who might choose to do so, of influencing and coercing its employees in their choice of representatives, for if the carrier under the pretext of a "new interpretation" can take away, without notice, road conductors' jobs and give them to yard conductors, it may also take away jobs from other crafts and transfer them to a rival group. By so doing it can undermine and weaken one union, and build and enhance the prestige of another.

We submit that the decision prevents any effective enforcement of the provisions of Section 6 and has placed in the hands of the carrier the *power* to influence its employees in their choice of representatives.

## D. THE EXERCISE OF EQUITY JURISDICTION IMPOSES NO HARDSHIP ON THE CARRIER.

We wish to emphasize that the carrier has *deliberately* placed itself in the position it now is. It knew what the established practice was and knew of its written agreement with O. R. C. of 1940. It knew of the demands that were being made upon it by the B. R. T. If it determined that it would accede to the demands of B. R. T. it should have

served the thirty-day notice required by Section 6 of the Act. The B. R. T. could have become a party to any mediation or conciliation procedure that might thereafter have been followed. Instead of following the orderly procedure provided for in the Act, it deliberately chose for itself, upon its own initiative, arbitrarily and without notice to destroy and take away the cherished seniority rights of the road conductors and give their job which they have had for 35 years to B. R. T. yard conductors. If the pattern followed by this carrier, in the case at bar, is to receive judicial sanction for other carriers to follow and the only relief which an aggrieved statutory representative or aggrieved employees have is to submit the matter to a bi-partisan board upon which *even a deadlock depends on the vote of the carrier members* then, indeed, industrial peace in the railroad industry is at an end.

The carrier would suffer no hardship by an adverse decision in this case. Any hardship it conceivably might suffer is of its own deliberate creation. The opinion indicates that at least a prima facie case has been made by O. R. C. The carrier need only have given the required notice and have submitted the issue to the processes of negotiation, mediation and arbitration to have avoided any hardship it may now suffer. *These are the very processes provided in the Act to settle disputes of this character.*

## E. THE PRACTICAL DIFFICULTIES OF PROCEDURE BEFORE THE ADJUSTMENT BOARD.

On the rehearing in the Elgin case, supra, a hypothetical situation was presented in the brief amicus curiae of the United States under example (c) at page 29. In a footnote reference was made to the case at bar. That hypothetical situation, under the court's decision, has become a reality.

The record discloses that there were 119 road conductors on the seniority roster entitled, in accordance with their seniority, to bid on the 5 road jobs in question; that there

were only a total of 109 road conductors' jobs; that with the elimination, by the act of the carrier, of the 5 road conductor jobs on the road drills 5 men who had been working as road conductors would no longer have work available and that each of the men on the seniority roster were directly affected by the elimination of these jobs. (Rec. of App., C. C. A., p. 468.) The number of jobs available for bids was reduced and the rights of all affected.

Under the Elgin case, supra, each and every one of these road conductors would have to either handle their own case or give O. R. C., or someone else, a power of attorney to present their grievance for loss of money earnings before the Adjustment Board would consider it. Some of these men may now have been retired or passed away. Some of these 119 men undoubtedly do not belong to the O. R. C. Some may belong to the B. R. T., and if they were to give the O. R. C. a power of attorney or take an active part, adverse to the B. R. T., they might be subjected to disciplinary action by the B. R. T. The road conductors actually displaced from road conductor jobs are demoted to road brakemen. These road conductors, in turn, exercising their seniority as road brakemen, effect each and every man on the road brakemen's seniority roster. Since all of the road brakemen on the road brakemen seniority roster may be affected, the problem of the authority of O. R. C. to handle the individual money claims is increased twofold.

Any decision of the Adjustment Board would also affect a third class and craft, i.e., the craft of yard conductors, represented by B. R. T. How many men are on the yard conductors seniority roster, who would be affected if a decision were rendered by the Adjustment Board favorable to O. R. C., is not disclosed by the record. The inquiry presents itself, however, as to whether or not they would be necessary parties. Some of the B. R. T. road conductors may actively oppose the money claims of the individuals involved for reasons of political exploitation and to enhance the status of the B. R. T.

In addition to the money claims of the individual men involved, which were characterized in the Elgin case, supra, as "minor disputes," the O.R.C., as a statutory representative of the class and craft, also has a very definite interest at stake in the "major dispute." The position of O.R.C., as the bargaining agent of road conductors, has been *challenged* by the carrier, in refusing to *treat and negotiate* with reference to the change of working conditions of the road conductors and by the B.R.T. as well.

The Adjustment Board, by the decision, is left free to determine whether or not a dispute of the character of the case at bar is one over which it will take jurisdiction except as it is limited to claims of individual employees *against* the carrier. If a deadlock results the National Mediation Board may determine it has no jurisdiction to appoint a referee except for the determination of individual claims against a carrier.

There is more involved in this controversy than the claims of individual employees. The O.R.C. as the statutory representative has rights and duties *above and beyond* those of the individual employees affected. We contend that all of the foregoing are factors that should and ought to be persuasive towards the exercise of injunctive relief, as indicated in the opinion of Mr. Justice Rutledge, rather than the denial thereof.

## III.

## Moore vs. Illinois Central Railroad, 312 U. S. 630 Is Overruled

The decision of the majority, inferentially at least, overrules *Moore vs. Illinois Central Railroad*, 312 U. S. 630. In that case, this court stated:

> "But we find nothing in that Act which purports to take away jurisdiction to determine a controversy over a wrongful discharge or to make an administrative

finding a prerequisite to filing a suit in court. * * * For neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature."

The majority opinion compels a statutory representative to seek relief at the hands of the Adjustment Board as a prerequisite to judicial relief contrary to the principles announced by this court in the Moore case. Irrespective of the merits of its position in such a dispute, it must face one hostile labor representative on the Board and depend entirely on the vote of some one of the carrier members to achieve even a deadlock.

It is submitted that the philosophy of the Railway Labor Act announced by this court in *Moore vs. Illinois Central Railroad Company*, a suit at law, should not be different when an action is brought in equity to enforce mandatory provisions of the Act. If, as a condition to injunctive relief, a decision must be obtained from the Adjustment Board as to whether or not a carrier has changed the rates of pay, rules or working conditions of its employees as embodied in agreements, such a course of procedure must inevitably increase rather than decrease strikes.

## IV.

## The Majority Opinion Removes All Force And Vitality From Section 6 Of The Railway Labor Act.

We respectfully submit that the decision of the majority should be reconsidered in the light of its far reaching effects on the jurisdiction of the Adjustment Board and the weight which it will have in the future upon all employer-

employee relationships under the Railway Labor Act. It is our belief that the decision of the court will encourage rather than discourage industrial strife by leaving to the statutory representative in these circumstances only the exercise of its economic strength as the one practical and effective remedy and that the decision opens the door to influence and coercion by carriers upon employees in the free exercise of their choice of representatives.

Respectfully submitted,

V. C. SHUTTLEWORTH

CARL S. KUEBLER

RUFUS G. POOLE

MILTON C. DENBO

*Attorneys for the Petitioners.*

February, 1946.

## CERTIFICATE OF COUNSEL

I, V. C. Shuttleworth, counsel for the above named petitioners, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

V. C. SHUTTLEWORTH

*Counsel for Petitioner*

# SUPREME COURT OF THE UNITED STATES.

No. 37.—October Term, 1945.

| | |
|---|---|
| Order of Railway Conductors of America, H. W. Fraser, President Thereof, et al., Petitioners, *vs.* Shelton Pitney and Walter P. Gardner, Trustees of Central Railroad Co. of New Jersey, et al. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit. |

[January 14, 1946.]

Mr. Justice Black delivered the opinion of the Court.

This case requires us to consider to what extent a Federal District Court having charge of a railroad reorganization has power to adjudicate a jurisdictional dispute involving the railroad and two employee accredited bargaining agents in view of the provisions in the Railway Labor Act, 45 U. S. C., § 151 *et seq.*, giving such power to the administrative agencies established thereunder. Each union claims that its respective collective bargaining agreement entitles it to supply conductors for five daily freight trains operated within the Elizabeth Port, New Jersey, yards of the railroad and both pressed their contentions on the reorganization trustees appointed under the provisions of § 77 of the Bankruptcy Act. 11 U. S. C. § 205. The two unions are the Order of Railway Conductors (O. R. C.), which represents road conductors who ordinarily operate trains outside the yards, and the Brotherhood of Railroad Trainmen (B. R. T.), which represents yard conductors who ordinarily operate trains inside the yards. But here, the practice over a period of years had been that at times yard conductors manned some trains outside the yard and road conductors manned some trains within the yard, including the five freight trains here involved. In 1940 the railroad in response to pressure by the O. R. C. agreed that thereafter only road conductors would man the outside trains. However, O. R. C. conductors continued to operate the five daily freight trains within the yard. In 1943 the railroad was prevailed upon by the B. R. T. to agree to substitute B. R. T.

yard conductors for the O. R. C. conductors operating these five trains.

Thereupon O. R. C. brought this suit in the reorganization court. It alleged that its members had for the past 35 years operated the trains in issue as a result of negotiations as to rules, rates of pay and working conditions between it and the railroad and that the 1940 contract specifically provided that this situation would not be changed without further agreement. Thus, the proposed displacement of O. R. C. conductors would violate § 6 of the Railway Labor Act which makes it unlawful for a carrier or employee representatives to change "pay, rules, or working conditions", unless 30 days written notice of the intended change shall have been given and the controversy has been finally acted upon by the Mediation Board.[1] The O. R. C. asked the court to instruct its trustees not to displace road conductors and to enjoin them permanently from taking such action so long as O. R. C.'s contracts with the road were not altered in accordance with the provisions of the Railway Labor Act.

Answers were filed by the trustees and the B. R. T. as intervenor. The case was referred to a Master who, after a hearing, found that O. R. C.'s collective bargaining contracts did not provide that its conductors were to operate the five freight trains and that the B. R. T. contract allotted these lines to its members. The District Court sustained these findings and accordingly dismissed the petition on the merits. The Circuit Court of Appeals held that the petition should be dismissed on jurisdictional grounds because it thought that the remedies of the Railway Labor Act for the settlement of disputes such as here involved are exclusive. 145 F. 2d 351. It further stated that if it should be mistaken on the jurisdictional question, then it agreed with the District Court that the road conductors must lose on the merits.

---

[1] "Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as require 1 by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Section 77(n) of the Bankruptcy Act provides that "No judge or trustee acting under this Act shall change the wages or working conditions of railroad employees except in the manner prescribed in the Railway Labor Act, . . . ." 47 Stat. 1481. Section 1 of the Railway Labor Act defines a carrier, subject to it, as including "any receiver, *trustee*, or *other individual or body, judicial* or otherwise, when in *the possession of the business of any such 'carrier'* . . . ." And § 2, Seventh, of the Act provides that "no carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class *as embodied in agreements* except in the manner prescribed in such agreement or in § 6 of this Act." Section 6, as we have seen, prohibits such changes unless notice is first given and its requirements are otherwise complied with. Section 2, Tenth, of the Act makes it a misdemeanor, punishable by both fine and imprisonment for a carrier wilfully to violate § 6.

These sections make it clear that the only conduct which would violate § 6 is a change of those working conditions which are "embodied" in agreements. But the answers here specifically denied that the O. R. C. agreements provided that road conductors operate the five trains in question. This put in issue the meaning of the contracts that allegedly embodied the working conditions which the trustees were about to change. The court, therefore, had to interpret these contracts before it could find that § 6 had been violated.

In interpreting the contracts the court might act in two distinct capacities. First, it might do so in the capacity of a "judicial" "body" in the "possession of the business", or a "carrier" within the meaning of § 1 of the Railway Labor Act. As such it would have to interpret the contracts in order to exercise the jurisdiction conferred by the Bankruptcy Act[2] to control its trustees so as to insure the preservation and proper administration of the debtor's estate. But such instructions, while binding on the trustees and, just as any other order, subject to appellate review, amount to no more than the decision any other carrier would sooner or later make about the course it must follow and, therefore, can not finally settle the dispute between Union and employer.

Finally to settle that dispute the reorganization court would

[2] See especially Subdivision (c) of §77 of the Act which provides that action of trustees in administering an estate shall be "subject to the control of the judge."

have to act in the further capacity of a tribunal empowered to grant the equitable relief sought, even though granting that relief requires interpretation of these contracts. But Congress has specifically provided for a tribunal to interpret contracts such as these in order finally to settle a labor dispute. Section 3 First (i) of the Railway Labor Act provides that disputes between a carrier and its employees "growing out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . may be referred by either party to the Adjustment Board." The Board can not only order reinstatement of the employees, should they actually be discharged, but it can also under § 3, First (o) and (p) grant a money award subject to judicial review with an allowance for attorney's fees should the award be sustained. Not only has Congress thus designated an agency peculiarly competent to handle the basic question here involved, but as we have indicated in several recent cases in which we had occasion to discuss the history and purpose of the Railway Labor Act, it also intended to leave a minimum responsibility to the courts.[3]

Of course, where the statute is so obviously violated that "a sacrifice or obliteration of a right which Congress . . . created"[4] to protect the interest of individuals or the public is clearly shown a court of equity could, in a proper case, intervene. *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & Steamship Clerks*, 281 U. S. 548; *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515. But here it does not clearly appear whether the statute has been violated or complied with or that the threatened action "would be prejudicial to the public interest." *Pennsylvania* v. *Williams*, 294 U. S. 176, 185. We have seen that in order to reach a final decision on that question the court first had to interpret the terms of O. R. C.'s collective bargaining agreements. The record shows, however, that interpretation of these contracts involves more than the mere construction of a "document" in terms of the ordinary meaning of words and their position. See *Brown Lumber Co.* v. *L. & N. R. Co.*, 299 U. S. 393, 396. *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 291. For O. R. C.'s agreements with the railroad must be read in the light of others between the railroad and B. R. T. And since all parties

[3] General Committee *v.* M.-K.-T. R. Co., 320 U. S. 323; Switchmen's Union *v.* Board, 320 U. S. 297; Trainmen *v.* Toledo P. & W. R. Co., 321 U. S. 50; Telegraphers *v.* Ry., Express Agency, 321 U. S. 342.

[4] Switchmen's Union *v.* Board, *supra*, 300.

seek to support their particular interpretation of these agreements by evidence as to usage, practice and custom that too must be taken into account and properly understood. The factual question is intricate and technical. An agency especially competent and specifically designated to deal with it has been created by Congress. Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. See *Thompson* v. *Magnolia Petroleum Co.*, 309 U. S. 478, 483-484; *Burford* v. *Sun Oil Co.*, 319 U. S. 315. Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute. Until such time, O. R. C. can not show irreparable loss and inadequacy of the legal remedy. The court of equity should, therefore, in the exercise of its discretion stay its hand. *Lawrence* v. *St. Louis-San Francisco Ry. Co.*, 274 U. S. 588, 592-3 and other cases cited in *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 51, n. 9; *Natural Gas Co.* v. *Slattery*, 312 U. S. 300.

We hold that the District Court had supervisory power to instruct its trustees as it did. And a review of the evidence persuades us that the court's findings on which such instructions were based are not clearly erroneous. To the extent that its order constitutes instructions to its trustees, it is affirmed. Of course, in this respect it is no more binding on the Adjustment Board than the action of any other carrier. But the court should not have interpreted the contracts for purposes of finally adjudicating the dispute between the unions and the railroad. The dismissal of the cause should therefore be stayed by the District Court, so as to give an opportunity for application to the Adjustment Board for an interpretation of the agreements. Any rights clearly revealed by such an interpretation might then, if the situation warrants, be protected in this proceeding.[5]

*It is so ordered.*

Mr. Justice JACKSON took no part in the consideration or decision of this case.

---

[5] Mitchell Coal Co. v. Pennsylvania Railroad Co., 230 U. S. 247, 267.

# SUPREME COURT OF THE UNITED STATES.

No. 37.—October Term, 1945.

Order of Railway Conductors of America, H. W. Fraser, President Thereof, et al., Petitioners,
*vs.*
Shelton Pitney and Walter P. Gardner, Trustees of Central Railroad Co. of New Jersey, et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[January 14, 1946.]

Mr. Justice Rutledge, dissenting in part.

I agree that the District Court should retain jurisdiction of the cause pending interpretation of the agreements in the procedure provided by the Railway Labor Act for submitting such questions to the Adjustment Board. Section 77(n) of the Bankruptcy Act was not intended, I think, to give the District Court jurisdiction to determine whether a "change in agreements affecting rates of pay, rules, or working conditions" within the meaning of § 6 has, in fact, taken place. Its sole effect is to require a bankruptcy court to follow the procedure set up by the Railway Labor Act.

In my opinion, however, petitioners are entitled to immediate temporary relief, pending the determination of the Adjustment Board, in order to assure compliance with § 6, if the Board should decide in their favor.

Section 6 enjoins a clear and positive duty on the part of carriers and employees, a duty which is judicially enforceable, since no other remedy is provided.[1] The opinion of the Court so rules, as I understand it, for otherwise there would be no reason for holding the cause. But if, pending the Board's determination,[2] the change

[1] Texas & N. O. R. Co. *v.* Brotherhood of Railway & Steamship Clerks, 281 U. S. 548; Virginia Ry. Co. *v.* System Fed. No. 40, 300 U. S. 515; Switchmen's Union *v.* National Mediation Board, 320 U. S. 297; General Committee *v.* Missouri Pacific R. Co., 320 U. S. 323, 331.

See text *infra* as to adequacy of the remedy before the Adjustment Board.

[2] The situation in this case is unusual because resort must be had to the Adjustment Board before it can be determined whether the forbidden change has been proposed or has taken place in fact.

Whether the relief sought should be granted depends on whether the Adjustment Board finds that the 1943 contract with B. R. T., or action taken

forbidden by § 6 takes place and the Board's decision turns out to be in favor of the petitioners, the very purpose of § 6 will have been defeated. Its object is to maintain the *status quo*, pending the expiration of the period provided by the section for allowing the processes of negotiation, mediation and conciliation to have play. It is to prevent changes being made until these processes have been exhausted or the prescribed waiting period has expired without bringing them into effect. See *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50; cf. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711.

The decision of the Board will not restore this rightful *status quo* for the period required for making its determination, including the time now gone by, or in fact for any later period. The only relief the Board can give is either "an administrative declaratory determination" or an award of money damages, subject to the special provision for judicial review. Although the latter remedy would afford partial vindication of private rights, it does not safeguard the public interest, in accordance with the primary design of § 6.[3] And in many cases it may be impossible for a court to effectuate the Board's decision for the future with adequate restorative measures.[4]

---

thereunder, constitutes a "change in agreements affecting rates of pay, rules, or working conditions" within the meaning of § 6 or one in "the rates of pay, rules, or working conditions of its employees as a class as embodied in agreement," except as provided in § 6, within the meaning of § 2, Seventh. Cf. also § 77(n) of the Bankruptcy Act. This in turn will depend upon the effect which the Board finds should be given to the prior agreements, including not only the 1940 contract with O. R. C., but the basic agreements of 1927 and 1928 with O. R. C. and B. R. T., respectively, as affected by the establishment of switching limits in 1929 and other matters bearing upon the interpretation of the written contracts and the rights of the parties.

Only after the Adjustment Board has acted can it be known whether a change in violation of § 6 was proposed or brought about through the 1943 agreement. If petitioners are correct in their view of their rights on the merits, and the Adjustment Board so finds, the 1943 contract and the action taken under it were in violation of § 6. If respondents are right as to the effect of the agreements made prior to 1943, and the Board so finds, no "change" in violation of § 6 was brought about by the 1943 contract, which in that event becomes merely declaratory of preexisting rights. The crucial issue is whether the 1943 agreement "changed," that is, altered the terms of of preexisting contractual rights or merely declared them, a question which only the Adjustment Board can decide, initially at any rate, since it requires interpretation of existing collective agreements, not the making of new or different ones. Cf. Elgin, J. & E. R. Co v. Burley, 325 U. S. 711.

[3] In providing a waiting period before final rupture, with leeway for mediation and conciliation to work, § 6 has the obvious purpose not only to

Accordingly I think the District Court should grant temporary relief to O. R. C., as was done at the beginning of this cause,[5] until the rights of the parties have been ascertained and permanent relief is given or denied. Petitioners have made a prima facie case,[6] not only for holding the cause pending the outcome of the proceedings before the Adjustment Board but also for temporary injunctive relief pending that decision. Without such relief the public interest will not be adequately protected nor will the court's jurisdiction be preserved, in the sense of power to afford the full relief required by the policy of the Act.

---

prevent infringement of private rights but more especially to save the public from possible disruption of service. See note 4.

[4] Although only five jobs are involved in this jurisdictional dispute, another may involve 500 or 5000. Ordering the reinstatement of any considerable number of men, once they have been wrongfully thrown out, to displace others who have taken their places itself involves the very kind of disruption, or possibility for it, which Congress sought to ward off by the provisions of § 6. And it is common knowledge that strikes involving large numbers may arise from an employer's adverse action affecting directly only a few employees or even one.

[5] The Court granted a stay order upon filing of the petition which remained in effect until April 5, 1943, when the order of reference to the master was made. Thereafter the trustees made effective the 1943 contract with B. R. T. and, in my opinion, by this action violated § 6.

[6] The decision of the Court implies that the petitioners' case is not frivolous. That it is not is borne out by the following facts, among others:

The trustees and B. R. T. do not deny that O. R. C. members had performed the work in question continuously for more than thirty-five years or exclusively until the contract of 1943 with B. R. T. was made and put into effect. They allege no protest against this arrangement until shortly after the 1940 agreement with O. R. C.

In 1929 the carrier established switching limit boundaries. Respondents say the effect of establishing these limits was generally that yardmen, represented by B. R. T., should not perform work outside of them and that roadmen, represented by O. R. C., should not perform work within them. The five drills in question lie within the switching limits. O. R. C. contends that the fixing of switching limits was not intended to change the previous practice under which road conductors had customarily manned the five drills. It points to the fact that road conductors continued to work on the five drills after the establishment of switching limits and to the further fact that, by the agreement made in 1940 between O. R. C. and the carrier, the latter agreed not to change the then present method of assigning conductors. O. R. C. also maintains that the basic agreements, taken in conjunction with the 1929 establishment of switching limits, did not prescribe territorial priorities, but merely provided for rates of pay to be applicable within and without the limits established.